# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1943**

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**No.**

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SAFEWAY STORES, INCORPORATED,
*Petitioner,*

*vs.*

CHESTER BOWLES, PRICE ADMINISTRATOR,
*Respondent.*

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## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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### I.

### OPINION BELOW.

The opinion (R. 23) of the United States Emergency Court of Appeals is not yet reported, but petitioner is advised that it will appear in 137 F. (2d).

### II.

### JURISDICTION.

The judgment of the Emergency Court was entered on October 12, 1943. (R. 22.) The jurisdiction of this Court

is invoked under Section 204 (d) of the Emergency Price Control Act of 1942, 50 U. S. C. A. App. §924 (d), 56 Stat. 31.

## III.

## STATEMENT OF THE CASE.

A full statement of the case has been given under heading "A" of the Petition (pp. 1-3 herein), and it is incorporated here by reference.

## IV.

## SPECIFICATION OF ERRORS.

1. The Emergency Court erred in entering a judgment granting the motions to dismiss the complaints.

2. The Emergency Court erred in holding that the wilful failure of the Price Administrator to take any of the specified actions required of him within the periods of time provided by the statute did not constitute such a denial of the protests as afforded the protestant the right to file complaints.

3. The Emergency Court erred in holding that a protest must be actually denied by an *overt act* of the Administrator in order to afford the protestant the right to file a complaint.

4. The Emergency Court erred in holding that where, as in this case, the Administrator unlawfully fails to act upon a protest within the statutory period provided, the protestant has a remedy by way of an order in the nature of a writ of mandamus directing the Administrator to take action.

## V.

## QUESTION PRESENTED.

The sole question presented is whether the failure and refusal of the Price Administrator to take, within the statu-

tory limitation period provided any one of the steps which he is directed to take by Section 203 (a) of the Emergency Price Control Act, constitute a denial of the protest within the contemplation of Section 204 (a) so as to afford the protestant the right to file a complaint in the Emergency Court of Appeals.

VI.

## STATUTORY PROVISIONS INVOLVED.

The only statute involved is the Emergency Price Control Act of 1942, 56 Stat. 23, as amended, 50 U. S. C. A. App. § 901. The provisions thereof, insofar as pertinent to the question here presented, follow:

> "Sec. 203. (a) . . . *Within a reasonable time* after the filing of any protest under this subsection, *but in no event more than thirty days after such filing or ninety days after the issuance of the regulation or order* . . . in respect of which the protest is filed, whichever occurs later, the Administrator shall either *grant or deny such protest in whole or in part, notice such protest for hearing,* or *provide an opportunity to present further evidence in connection therewith.* . . ." (Emphases supplied.)

> "Sec. 204. (a) Any person who is aggrieved by the denial or partial denial of his protest may, *within thirty days after such denial, file a complaint with the Emergency Court of Appeals,* . . . *Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation,* order, or price schedule, in whole or in part, to *dismiss the complaint,* or *to remand the proceeding:* . . ." (Emphases supplied.)

> "(c) . . . The court shall have the powers of a district court with respect to the jurisdiction conferred on it by this Act; except that the *court shall not have power to issue any temporary restraining order or interlocutory decree staying or restraining,* in whole

or in part, the effectiveness of any regulation . . . The court shall exercise its powers and prescribe rules governing its procedure in such manner as to *expedite the determination of cases* of which it has jurisdiction under this Act. . . ." (Emphases supplied.)

"(d) *Within thirty days* after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a *petition for a writ of certiorari may be filed in the Supreme Court of the United States, . . . The Supreme Court shall advance on the docket and expedite the disposition of all causes* filed therein pursuant to this subsection. *The Emergency Court of Appeals, and the Supreme Court* upon review of judgments and orders of the Emergency Court of Appeals, *shall have exclusive jurisdiction* to determine the validity of any regulation. . . . *Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation,* order, or price schedule, *or to stay, restrain, enjoin, or set aside,* in whole or in part, any provision of this Act authorizing the issuance of such regulations . . ." (Emphases supplied.)

## VII.

## SUMMARY OF ARGUMENT.

*Point 1.* There has been judicial recognition of the broad general principle that, as here applied, the failure of the Administrator, within the statutory limitation period, to take any of the required actions cannot be used to thwart judicial review; and that such attitude, continued beyond the statutory period provided for positive action, constitutes, in fact and in contemplation of law, a denial of the protest involved and gives rise to the right of appeal. The contrary contention, asserted by the Administrator and accepted by the Emergency Court, does not give effect to the clear intent of Congress that a protestant shall have

the advantage of prompt administrative action and speedy judicial review.

*Point 2.* The narrow construction placed upon the Act by the Emergency Court in requiring an overt act of denial and in not requiring the Administrator to act within the time limit set by the statute not only nullifies the intent of Congress to provide prompt determination by the Administrator but it also nullifies the intent to provide speedy adjudication by delaying indefinitely the time when such adjudication may become possible. Such construction, contrary to the rule relating to statutory construction often enunciated by this Court, will seriously impair the effectiveness of the Act and lead to absurd consequences, while ignoring a reasonable interpretation which would be entirely consistent with the legislative purpose, namely, that the Administrator's failure to act within the statutory limitation period provided constitutes such a denial as will support a complaint in the Emergency Court.

*Point 3.* The decision of the Emergency Court indefinitely extends the reasonable limitations imposed by Congress upon the required actions of the Administrator and thus postpones, or may even preclude, the operation of the due process machinery of the Act and, in the case of an unlawfully confiscatory regulation, results in a deprivation of property in violation of the Fifth Amendment to the Constitution. (Interim relief is expressly forbidden, and there is no provision whereby a person may recover for losses sustained under a regulation which is finally held to be unlawful.)

*Point 4.* If the Emergency Court should, as it erroneously contends is its prerogative, assume jurisdiction for the purpose of issuing a mandatory order requiring the Administrator to take action upon a pending protest, the only action that could properly be considered in aid of, or

as removing an obstacle to, the jurisdiction of the court would be one *denying* the protest. No other action could possibly lay the foundation for a complaint upon the filing of which the court would acquire jurisdiction of the subject matter. But no such action could properly be ordered because it would interfere with the exercise of the Administrator's discretion and be beyond the realm of mandamus. And even if the court were to issue such a mandatory order, other dilatory tactics are available to the Administrator which would only serve to accentuate the inadequacy of the remedy suggested by the court.

## VIII.

## ARGUMENT.

**Point 1. The failure of the Administrator to act upon petitioner's protests within the statutory limitation period constituted a denial of the protests.**

The Administrator came before the Emergency Court and frankly admitted his failure to act upon petitioner's protests within the applicable statutory limitation periods and his violation of the Act creating his office and prescribing his duties and the manner and method of carrying them out, but he contended that the court could not entertain petitioner's complaints because he had not, by a positive act, denied petitioner's protests in whole or in part.[1] The court adopted the contention.

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[1] In his brief in support of his motion to dismiss the complaint in Docket No. 80 the Administrator contended that "the fact that formal action in accordance with section 203 (a) of the Act was not taken until *several days* after the expiration of the statutory period is not sufficient to outweigh the considerations underlying the entire statutory method of protest and judicial review." In other words, the Administrator contended below that any delay attribu-

Petitioner concedes that there may be no case on all fours with that at bar. However, it does contend that there has been judicial recognition of the broad general principle that, as here applied, the failure of the Administrator, within the statutory limitation period, to take any of the required actions cannot be used to thwart judicial review; and that such attitude, continued beyond the statutory period provided for positive action, constitutes, in fact and in contemplation of law, a denial of the protest involved and gives rise to the right of appeal. The contrary contention, asserted by the Administrator and accepted by the Emergency Court, does not give effect to the clear intent of Congress that a protestant shall have the advantage of prompt administrative action and speedy judicial review.

In the case of *Taylor v. Mason*, 9 Wheat. 325, 344, this Court, through Mr. Chief Justice Marshall, stated that "the words 'refusing to comply' may, in general, have the same operation in law as the words 'failing to comply' would have". There the failure to comply referred to a condition in a will, but it voiced the general principle that inaction may amount to the same thing as an overt refusal to act or, as applied to the case at bar, that failure to grant amounts to the same thing as denial—refusal to grant. The same reasoning would apply to an order of the Administrator granting a protest in part but not specifically denying the remainder. Certainly the part not specifically granted should sensibly be held to have been denied regardless of

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table to his policy must be considered paramount to and substituted for the time limitation imposed by Congress. (Actually, it was *25 days* (see footnote, R. 24) before the Administrator issued an "Order to Show Cause" why the relief requested in the protest had not been granted by an amendment to the regulation involved. This was 10 days *after* the complaint was filed in the Emergency Court.—The amendment did not afford complete relief.)

the absence of positive or overt action to that effect. Otherwise, "denial" would hinge upon the use of particular words by the Administrator at the time he takes action.

This general principle of denial or refusal by inaction was followed in *Ginnochio v. Hydraulic Press Brick Co.*, 266 Fed. 564, 569, citing the decision of this Court in the *Taylor* case, supra, although the situation was entirely dissimilar, involving the Ohio Workmen's Compensation Act. And in *Commercial Casualty Insurance Co. v. Hilton* (Tex. Civ. App.), 55 S. W. (2d) 120,[2] the refusal of a State Industrial Accident Board to act in such a way as clearly to afford a statutory right of judicial review was held to constitute such a denial as to support an appeal to the courts.

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[2] An appeal was taken from the refusal of the Industrial Accident Board to set aside a compromise settlement of a compensation claim on the ground that it was obtained by fraud or mistake. The Board also refused to set for hearing an application to reopen the case and set aside the order of compromise. The lower court set aside the compromise for fraud and gave judgment for compensation and expenses. The appellant contended, inter alia, that the court acquired no jurisdiction to adjudicate the claim for compensation and expenses but only the question of mistake or fraud, and that the Board's refusal to hear and determine the matter on the merits constituted no *appealable* award thereon. The appellate court stated (p. 122):

> ". . . It is true that the jurisdiction of courts under the Workmen's Compensation Act attaches only by appeal from a *final award* or decision of the Industrial Accident Board, either awarding or refusing a claim for compensation or other relief authorized by the Act. . .
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> ". . . if the Board, in the exercise of its administrative and quasi-judicial functions under the Act, had the power or authority to review its previous order approving the compromise settlement agreement, and to set it aside or change or revoke it upon a showing

A further recognition of the negative effect of failure to act occurred in *Dobbie v. United States* (1927), 19 F. (2d) 656, which arose under the World War Veterans' Act and was based upon the refusal of the Director to take action upon a claim. The court held (p. 657) that—

> ". . . it is the height of unreason to say that the director can unreasonably delay action on a claim and thus oust the courts of jurisdiction until he is ready to confer it on them. *Such a contention finds no support either in morals, common sense or law.* . . ."[3] (Emphasis supplied.)

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that it had been procured by mistake or fraud, we think it manifest that the . . . *order of the Board, refusing to set aside the settlement agreement . . . and refusing to consider appellee's claim . . . constituted a denial of the claim for compensation, giving the courts jurisdiction on this appeal.* . . . Whatever the reason . . . , *the refusal to act effectively closed the door of relief to him; and was a denial of his pending claim for compensation.* . . ." (Emphases supplied.)

[3] See also *Holmes County, Miss. v. Burton Const. Co., et al.*, 267 Fed. 769, wherein it was held (pp. 771-772) that—

> ". . . *the failure to allow, after a reasonable time, is equivalent, for the purposes of suit on a claim, to an actual denial.* The purpose of the presentation is to give the county an opportunity to examine and consider the claim on its merits before being subjected to a suit. *It is not the purpose of the statute, nor can it be given the effect, to permit the board to defeat a claim by nonaction. Such a construction would amount to lodging with the board the power to deny suitors access to the courts.* . . ." (Emphases supplied.)

And *People ex rel. Village of Hinsdale v. Bd. of Sup'rs. of DuPage County*, 309 Ill. App. 609, 617, where the refusal of the County Board "to formally pass upon the request of the Village" was held to be "in effect a denial" thereof.

The language of the Veteran's Act upon which the *Dobbie* case turned was changed by the Act of July 3, 1930,[4] but the principle enunciated in that case remains undisturbed. Furthermore, in Veterans' cases the Administrator of Veterans' Affairs is not required to take action within any specified time, and suit may be brought within six years from the time the claim accrues. That is vastly different from the limitation of time imposed upon the Price Administrator under the Emergency Price Control Act, and from the 30 days allowed for appeal to the Emergency Court. If a protestant should assume that that court has jurisdiction to issue a mandatory order to compel action by the Price Administrator and file a motion to that end, by the time the motion was denied as being beyond the jurisdiction of the court the 30-day appeal period would doubtlessly have expired or be so far gone as to be of no practical value to the protestant.

By failing to grant a protest, the Administrator as effectively withholds relief from a protestant as though he has formally denied the protest. In fact, his inaction is capable of more far-reaching adverse effect because, under the Administrator's own theory (now adopted by the Emergency Court), a protestant has no right of judicial review until positive action is taken. For all a protestant knows, that may never occur. Certainly, if the Administrator may with impunity disregard the statutory mandate for a week he may do so for a month, or for a year, or for all time. Such disregard of the specific procedural requirements of Section 203 (a) of the Act makes a mockery of the right of review granted by Section 204 (a).

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[4] 38 U. S. C. A. §445. See *United States v. Bell*, 80 F. (2d) 516.

**Point 2. The narrow interpretation given the Act by the Emergency Court is contrary to the legislative purpose and the decisions of this Court relating to statutory construction.**

The Congressional intent to provide speedy action by the Administrator on protests, speedy determination of complaints filed with the Emergency Court, and speedy disposition of cases reviewed by this Court is obvious from the language of the statute.

Section 203 (a) provides that—

> ". . . *Within a reasonable time* after the filing of any protest under this subsection, *but in no event more than thirty days after such filing or ninety days after the issuance of the regulation or order* . . . in respect of which the protest is filed, whichever occurs later, *the Administrator shall* either *grant or deny such protest in whole or in part, notice such protest for hearing,* or *provide an opportunity to present further evidence in connection therewith.* . . ." (Emphases supplied.)

Section 204 (a) provides a period of 30 days within which a complaint may be filed with the Emergency Court after a denial of a protest, and Section 204 (c) admonishes the court to—

> ". . . expedite the determination of cases of which it has jurisdiction under this Act."

Only 30 days (instead of the usual three months) after the entry of a judgment by the Emergency Court are allowed by Section 204 (d) for filing a petition for a writ of certiorari in this Court. It is then provided that this Court—

> ". . . shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. . . ."

In spite of such clearly expressed intent to expedite consideration of cases from their inception in the Office of Price Administration on through their adjudication in the Emergency Court and before this Court, the Emergency Court, in effect, states that the Administrator is not bound by the mandate of the statute directing him to act within a specified time. This not only nullifies the expressed purpose of Congress to provide prompt determination by the Administrator but it likewise nullifies the expressed requirement for speedy adjudication in such a way as to substitute the will of the Administrator for the expressed will of Congress.

The Emergency Court, in requiring an overt act of denial, with its aforementioned consequences, has created a result contrary to the rule enunciated by this Court that "all laws are to be given a sensible construction," and that "a literal application of a statute, which would lead to absurd consequences, should be avoided whenever a reasonable application can be given to it, consistent with the legislative purpose." *United States v. Katz,* 271 U. S. 354, 357. See also *United States v. Ryan,* 284 U. S. 167, 175, and *United States v. American Trucking Association,* 310 U. S. 534, 543. Indeed, this Court has even stated that a statute will not be given a construction by which its "effectiveness" will be "seriously impaired", where a different construction is possible. *Sunshine Anthracite Coal Co. v. Adkins,* 310 U. S. 381, 392.

It is hardly necessary to point out that the interpretation given the Act by the Emergency Court will seriously impair its effectiveness and lead to absurd consequences, and that a reasonable construction, which would be entirely consistent with the legislative purpose, would be to apply the principle urged by the petitioner that the Administrator's failure to act within the statutory limitation period

provided constitutes such a denial as will support a complaint in the Emergency Court.[5]

**Point 3. The decision of the Emergency Court makes the operation of the Act violative of the Fifth Amendment to the Constitution.**

Petitioner realizes that the purpose of the Emergency Price Control Act may not be achieved without imposing hardship on many persons—hardship which may often border on actual confiscation of property before the due process machinery of the Act can be set in motion. It is not contended that such a situation in the furtherance of the national defense and security is in violation of the Constitution of the United States. However, it is well settled that the existence of a state of war does not suspend or change the Constitutional guaranties. *United States v. Cohen Grocery Co.*, 255 U. S. 81, 88. And when the provisions of the Act which are intended to afford due process are construed in such a way as to extend the confiscatory administrative period beyond the reasonable limitations imposed by Congress, petitioner contends that there is a failure of due process and a deprivation of property in violation of the Fifth Amendment to the Constitution.

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[5] A further indication of the legislative intent to provide speedy determination of cases appears in a bill (S. 238, 78th Cong., 1st Sess.) now pending in Congress and footnoted (R. 27) in the opinion of the Emergency Court. It proposes to amend Section 203 (a) of the Act by compelling the Administrator, within 60 days (instead of the 90 now provided) after the filing of a protest, to grant or deny it in whole or in part. It also clarifies Section 204 (a) by specifically providing for a complaint based upon the "failure of the Administrator to reach a decision on said protest within the period designated." The bill is now before a subcommittee of the Senate Committee on the Judiciary.

Even though the regulation involved be highly confiscatory it may not be enjoined or its operation suspended by any court; it may only be set aside upon final determination by the Emergency Court or, upon review, by this Court. In such a case the employment of dilatory tactics by the Administrator (as was admittedly done here) may cause immeasurable, or even ruinous, loss to a protestant. An ultimate judicial determination in a protestant's favor would be of little practical value because no method is provided whereby a person unlawfully subjected to loss may be made whole. Such deprivation of property is both contrary to the expressed legislative purpose to provide speedy justice and violative of the due process clause of the Fifth Amendment to the Constitution.

**Point 4. The decision of the Emergency Court, contrary to the intent of Congress, leaves petitioner without an adequate remedy.**

The Emergency Court, in an apparent effort to support its decision that a protestant has no right to file a complaint regardless of the failure and refusal of the Administrator to obey the mandatory provisions of Section 204 (a), states (R. 27):

> "It does not follow, however, that a protestant is wholly without remedy in case the Price Administrator improperly delays action upon his protest. . . . If the Administrator should unreasonably delay final action it would seem clear that *this court, upon a proper showing, may* under the authority of Section 266 of the Judicial Code (28 U. S. C. A. § 377) *in aid of its jurisdiction issue an order in the nature of a writ of mandamus directing the Price Administrator to take action upon a pending protest. . . .*" (Emphases supplied.)

Petitioner is aware of the well-established rule recently repeated by this Court in *Roche v. Evaporated Milk Asso-*

*ciation*, 319 U. S. (Adv. Op.) 21, 25, to the effect that the authority of an appellate court to issue a writ of mandamus is not confined to the issuance of writs in aid of jurisdiction already acquired by appeal but "extends to those cases which are within its appellate jurisdiction although no appeal has been perfected. Otherwise the appellate jurisdiction could be defeated and the purpose of the statute authorizing the writ thwarted by unauthorized action of the district court obstructing the appeal." Later appears the observation that "a function of mandamus in aid of appellate jurisdiction is to remove obstacles to appeal." But an appellate court will not order a lower court to proceed in any certain way, as that would be interfering with its discretion and judgment. See *Ex parte Newman*, 81 U. S. 152, 169.

None of the cases which support this rule involves a federal agency or department whose exercise of certain powers is ordered within a specified period of time. For the most part they involve lower *courts*, which are not required to act within any given time, and whose ultimate action could be made the subject of review by one *or more* parties. Similarly, in the only case (*Interstate Commerce Commission v. Humboldt Steamship Co.*, 224 U. S. 474) cited by the Emergency Court involving mandamus to a federal agency there was no time limit within which action was required to be taken. Indeed, there the Interstate Commerce Commission *had acted*, but in a way to which the petitioner objected, the Commission having dismissed the petition for lack of jurisdiction. This Court held that the Commission did have jurisdiction and ordered a writ of mandamus to issue to compel it to proceed according to law.

In addition to the absence of any limitation period upon the required action, there is another material difference between the cases upholding the aforementioned rule and that at bar. Here the proceeding before the Administrator was

ex parte in nature, there being no party other than petitioner involved. Therefore, petitioner was the *only* one to whom a right of appeal could possibly accrue, and that would occur *only* upon its failure to obtain the desired relief in the proceedings before the Administrator, namely, only in the event of a *denial* of its protest.

Therefore, if the lower court should assume jurisdiction for the purpose of issuing a mandatory order requiring the Administrator to take action, it is perfectly clear that the only action which could properly be considered "in aid" of, or as removing an obstacle to, the jurisdiction of the court would be one *denying the protest* in whole or in part. *No other action could possibly lay the foundation for a complaint upon the filing of which the court would acquire jurisdiction of the subject matter.* But, obviously, as admitted by the Emergency Court (R. 28), no such action would be ordered because it would interfere with the exercise of the Administrator's discretion and be beyond the realm of mandamus.

The jurisdiction of the Price Administrator is not in question, as was that of the Interstate Commerce Commission in the *Humboldt* case, supra, but only the failure and refusal of the Administrator to take any one of the mandatory actions prescribed by law within the time limit specified. In cases arising under the Emergency Price Control Act time is an all-important element, as we have seen by (1) the time limitation placed upon the Administrator, (2) the 30-day period allowed for filing a complaint in the Emergency Court, with the direction that that court shall "expedite the determination" of cases, and (3) the 30 days (instead of the usual three months) provided for filing a petition for a writ of certiorari in this Court, with the requirement that this Court "shall advance on the docket and expedite the disposition" of the cause.

The Congress even indicated that the time limitation upon the prescribed actions of the Administrator is beyond that which might ordinarily be termed "reasonable". The Act states that a "reasonable" time for action is *within* ("in no event *more* than") the limitation period provided by Section 203 (a). Any delay beyond such period would obviously be unreasonable within the meaning of the statute; indeed, it would seem that the *maximum* limitation period, while available in an emergency (where the Administrator is unable to make up his mind "within a reasonable time"), should be construed as *un*reasonable. But the Emergency Court would apparently substitute a new and indefinite period of delay in which the Administrator might indulge with impunity and, of course, permit the hardship of the regulation to continue unabated and unabatable.

Unless the Administrator is forced to act *within the time limitation set by Congress,* a protestant is left to the mercy of the whims of the Office of Price Administration. There is no relief except through the Emergency Court.[6] Regardless of the hardship being occasioned by the regulation protested, and of the fact that it may be clearly arbitrary and capricious and ultimately set aside by the Emergency Court or by this Court on review, the Act (Sections 204 (c) and (d) ) specifically withholds any sort of interim relief by way of injunction or otherwise. Nor does the Act afford any

[6] The Administrator, on the other hand, may cause criminal or civil proceedings to be instituted against a person in any district court within whose jurisdiction the alleged violation occurred and, in the case of a civil proceeding, in the district where the defendant resides or transacts business. (Section 205 (c).) But such person may only question the act of the Administrator in a protest proceeding in the latter's office and then, in case of a "denial", in the Emergency Court, whose decision is subject to review by this Court. (Sections 203 (a), 204 (a) and (d).)

means whereby a protestant may recover losses incurred through the imposition of an unlawful regulation. His only hope is to shorten the period of his loss by obtaining reasonably prompt administrative relief or, failing in that or in persuading the Administrator to take any one of the required actions within the statutory limitation period, by obtaining relief through judicial review at the earliest possible moment.

Therefore, unless the Administrator is held to strict compliance with the mandate of the statute, a protestant, in accordance with the ruling of the Emergency Court, must await the pleasure of the Administrator and his numerous assistants, eight of whom (R. 23-24) joined in the successful effort to have the lower court sanction the inaction which gave rise to the complaints here involved. True, the Emergency Court did indicate that the Administrator might be made the object of an order in the nature of a writ of mandamus if he should "unreasonably" delay action upon a protest, but such authority is questioned under the decisions of this Court and in view of the manifest intent of Congress that there should be *speedy* determination and review.

If a protestant should make that which the Emergency Court would consider a "proper showing" and issue some order in the nature of a writ of mandamus directing the Administrator to act upon a pending protest he could, for example, merely notice the protest for hearing, as he was originally requested to do in this case,[7] and then continually

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[7] In each case petitioner requested oral hearing. (R. 2, 10, 17.) However, as already indicated, no protest here involved was noticed for hearing. In fact on September 8, 1943, the Administrator specifically *denied* the requests for oral hearings. (R. 24, footnote.) This was *after* the first two complaints were filed, and the day before the third was filed.

put off the day of hearing. If the lower court should then see fit to issue another mandatory order, the Administrator, after further delays, could "provide an opportunity to present further evidence", and then, after the lapse of additional time, grant the protest in part. If this were considered an "overt act" of denial as to the balance of the protest the protestant could, if he were still in business and able to proceed, file a complaint in the Emergency Court.

Petitioner insists that the alternative provided by the decision of the Emergency Court is certainly not an adequate remedy if, indeed, it be a remedy at all.

## IX.

## CONCLUSION.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Honorable Court of its supervisory powers in order that the procedural and review provisions of the Emergency Price Control Act may be given the effect intended by Congress and required by the Constitution and the decisions of this Court; and that to such an end a writ of certiorari should be granted, and that this Court should review the judgment of the United States Emergency Court of Appeals and finally reverse it.

Respectfully submitted,

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